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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,987	03/24/2004	David A. Orbits	40062.91USC1	6801

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Attention of Joshua W. Korver
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EXAMINER	
ABEL JALIL, NEVEEN	

ART UNIT	PAPER NUMBER
2165	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/808,987	ORBITS ET AL.	
	Examiner	Art Unit	
	Neveen Abel-Jalil	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/1/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Remarks

1. Applicant's remarks/response filed on 9/28/2006 with regards to the mailed election restriction requirements are acknowledged and entered. Therefore, the previous election/restriction requirement notice is hereby withdrawn. Claims 7-17 have been cancelled. Claims 1-6, and 8-20 are pending examination.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: SYSTEM AND METHOD FOR RELIABLY REPLICATING DATA USING MANIFEST File.

Claim Objections

3. Claims 1, 3-6, and 18-20 are objected to because of the following informalities: Claims 1, 3, 4, and 18-20, recite "for each", "for the resource", "for facilitating" which is intended use and does not cause any functionality to occur in the computer. The limitations following the phrase *"for"* describes only intended use but not necessarily required functionality of the claim. Limitations following the phrase *"for"* do not carry patentable weight, which cause the claims to appear as a series of non-functional descriptive material/data without any functional relation with each other. Applicant is required to amend the claims so that the claim limitations are recited in a definite form such as "to", "that", "based on", "of", etc.

Claim 18, line 5, recite "such that" which constitute Intended use and does not carry patentable weight since it never has to occur. The claim should be amended to recite more firm and positive language (i.e. "providing", "making" or "causing"). Appropriate correction is required.

Claims 1, 5, and 6 recite an "if" statement which suggest optionally, passive recitation. If the Applicant intended to have the remaining limitations after the "if" statement to be considered fully and given complete patentable weight. The "if" recitation should be changed to recite more firm and definite language (i.e. wherein or when). Since "if" statement is optional, the remaining limitation does not necessarily have to happen (i.e. the first resource is identified). Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. That claims do not recite a practical application by producing a physical transformation or producing a useful, concrete, and tangible result. To perform a physical transformation, the claimed invention must transform an article of physical object into a different state or thing. Transformation of data is not a physical transformation. A useful, concrete, and tangible result must be either specifically recited in the claim or flow

inherently therefrom. To be useful the claimed invention must establish a specific, substantial, and credible utility. To be concrete the claimed invention must be able to produce reproducible results. To be tangible the claimed invention must produce a practical application or real world result. In this case, claim 1 fails to produce a tangible result because the recitation of "if a first resources ....does not exist" does not provide an output or storage. Its an optional recitation that never has to happen. While claim 18, has no outcome to the "adding" step. Is "identifier" being added to the manifest file outputted or stored? Claims should be amended to recite an output.

6. Claim 18 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 18 is not limited to tangible embodiments. In view of Applicant's disclosure, specification paragraph 16, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., storage devices) and intangible embodiments (e.g., signals, carrier wave or other transport mechanism). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

To overcome this type of 101 rejections the claims need to be amended to include only the physical computer media and not a transmission media or other intangible or non-functional media. For the instant specification, carrier medium and transmission media would be not statutory but storage media would be statutory. The claim should be amended to recite "computer-readable storage medium".

7. Claims 1, and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The definitions in the specification aren't enough to

exclusively cover the "resources" and the "replica members" to be hardware only implementations. Claims are missing hardware tied to the method steps in order to realize their functionality. Claims should recite computer/hardware in the body of the claim.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There appears to be no nexus between the preamble and the body of the claim. The intended use of the preamble of "replicating data from a first member to a second member" never actually takes place in the body of the claim.

Claim 18 recites the limitation "the replication" in the preamble. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claims 1-6, and 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Windows 2000 Resource Kit, "How FRS Works" File Replication Service. Pg. 1-4, August 31, 2000 (hereon Windows) -acquired from applicant's provided IDS-.

As to claim 1, Windows discloses a computer-implemented method of replicating data from a first member of a replica set to a second member of a replica set, comprising:

creating a manifest file at the first member, the manifest file including an identifier for each of a plurality of resources that exist at the first member (See page 2, paragraph 6, also see page 1, paragraph 6);

causing the manifest file to be reproduced at the second member of the replica set (See page 2, paragraph 5);

in response to the manifest file being reproduced at the second member, identifying whether each resource identified in the manifest file exists at the second member (See page 1, paragraph 8, also see page 2, paragraph 5); and

if a first resource identified in the manifest file does not exist at the second member, preventing a second resource identified in the manifest file from being executed until the first resource does exist at the second member (See page 1, paragraph 3, also see page 1, paragraphs 5-6).

As to claim 2, Windows discloses wherein identifying whether each resource exists at the second member includes comparing information in the manifest file with information stored at

the second member, the information stored at the second member identifying a plurality of resources stored at the second member (See page 1, paragraphs 5-6).

As to claim 3, Windows discloses wherein the identifier for each resource includes a version identifier associated with the resource (See page 1, paragraph 6).

As to claim 4, Windows discloses wherein identifying whether each resource exists at the second member includes comparing the version identifier for the resource with another version identifier associated with another copy of the resource stored at the second member (See page 3, paragraphs 13-15).

As to claim 5, Windows discloses further comprising if the first resource does not exist at the second member, awaiting receipt of the first resource at the second member and, in response to receiving the first resource at the second member, executing the second resource (See page 3, paragraphs 4-5).

As to claim 6, Windows discloses further comprising if the first resource does not exist at the second member, awaiting receipt of every resource identified in the manifest file, and in response to a final resource identified in the manifest file being received at the second member, executing the second resource (See page 3, paragraphs 10-11).

As to claim 18, Windows discloses a computer-readable medium having computer-executable instructions for facilitating the replication of data from a first member of a replica set to a second member of the replica set, comprising:

receiving a notice that a resource in a group of resources is being modified, the group of resources being interrelated such that a proper functioning of the group of resources is dependent on a similar version of each resource in the group of resources coexisting (See page 3, paragraphs 3-4);

in response to the notice, issuing an instruction to create a manifest file (See page 3, paragraphs 4-5); and

adding to the manifest file an identifier for each resource in the group of resources (See page 3, paragraphs 4-6).

As to claim 19, Windows discloses wherein adding the identifier for each resource to the manifest file further comprises adding to the manifest file a globally-unique identifier for each resource (See page 3, paragraph 8, and see page 3, paragraph 14).

As to claim 20, Windows discloses wherein adding the identifier for each resource to the manifest file further comprises adding to the manifest file a version identifier for each resource (See page 3, paragraph 12-14).

Alternatively the claims are being rejected under:

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-6, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Moshaiov et al. (U.S. Patent No. 6,256,634 B1).

As to claim 1, Moshaiov et al. discloses a computer-implemented method of replicating data from a first member of a replica set to a second member of a replica set, comprising:

creating a manifest file at the first member, the manifest file including an identifier for each of a plurality of resources that exist at the first member (See column 10, lines 50-65);

causing the manifest file to be reproduced at the second member of the replica set (See abstract);

in response to the manifest file being reproduced at the second member, identifying whether each resource identified in the manifest file exists at the second member (See column 5, lines 42-54); and

if a first resource identified in the manifest file does not exist at the second member, preventing a second resource identified in the manifest file from being executed until the first resource does exist at the second member (see column 8, lines 26-39).

As to claim 2, Moshaiov et al. discloses wherein identifying whether each resource exists at the second member includes comparing information in the manifest file with information stored at the second member, the information stored at the second member identifying a plurality of resources stored at the second member (See column 7, lines 23-32).

As to claim 3, Moshaiov et al. discloses wherein the identifier for each resource includes a version identifier associated with the resource (See column 7, lines 43-56).

As to claim 4, Moshaiov et al. discloses wherein identifying whether each resource exists at the second member includes comparing the version identifier for the resource with another version identifier associated with another copy of the resource stored at the second member (See column 8, lines 23-46).

As to claim 5, Moshaiov et al. discloses further comprising if the first resource does not exist at the second member, awaiting receipt of the first resource at the second member and, in response to receiving the first resource at the second member, executing the second resource (See column 8, lines 51-62).

As to claim 6, Moshaiov et al. discloses further comprising if the first resource does not exist at the second member, awaiting receipt of every resource identified in the manifest file, and in response to a final resource identified in the manifest file being received at the second member, executing the second resource (See column 8, lines 47-62).

As to claim 18, Moshaiov et al. discloses a computer-readable medium having computer-executable instructions for facilitating the replication of data from a first member of a replica set to a second member of the replica set, comprising:

receiving a notice that a resource in a group of resources is being modified, the group of resources being interrelated such that a proper functioning of the group of resources is dependent on a similar version of each resource in the group of resources coexisting (See column 9, lines 25-41, also see column 12, lines 19-28);

in response to the notice, issuing an instruction to create a manifest file (See column 10, lines 50-65); and

adding to the manifest file an identifier for each resource in the group of resources (See column 8, lines 50-67).

As to claim 19, Moshaiov et al. discloses wherein adding the identifier for each resource to the manifest file further comprises adding to the manifest file a globally-unique identifier for each resource (See column 7, lines 50-56).

As to claim 20, Moshaiov et al. discloses wherein adding the identifier for each resource to the manifest file further comprises adding to the manifest file a version identifier for each resource (See column 8, lines 50-67).

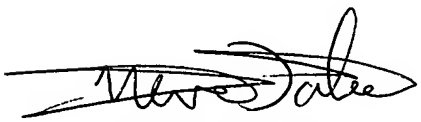
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO Form 892 for List of Cited References.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Neveen Abel-Jalil
October 31, 2006